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March 4, 2008

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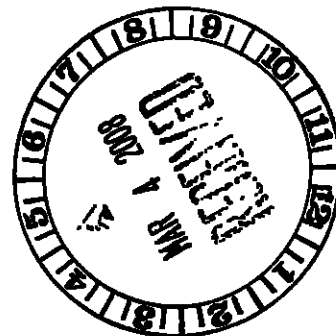
**BY E-FILING AND BY HAND**

Ms. Anne K. Quinlan  
Acting Secretary  
Surface Transportation Board  
395 E Street, S.W.  
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Washington, D.C. 20423-0001

221744  
ENTERED  
Office of Proceedings

MAR 4 - 2008

Pct of  
Public Record



Subject: Finance Docket No. 35081 – *Canadian Pacific Railway Company, et al. – Control – Dakota Minnesota & Eastern Railroad Corporation, et al.*

Dear Acting Secretary Quinlan:

Enclosed for filing in the above proceeding are an original and ten copies of the Public Version of Metra's Comments in Opposition to Proposed Transaction and Request for Conditions, and ten copies of the Highly Confidential Version of Metra Comments to be filed under seal pursuant to the terms of the Protective Order issued by the Board in this proceeding. Also enclosed is a disc containing an electronic copy of the Public Version of Metra's Comments.

Please acknowledge receipt of the above identified filings by date stamping the extra copies provided and return same to our messenger for our files.

Sincerely yours,

Robert P. vom Eigen

RVE: dmo  
Encls:

cc. Michael C Noland (w/Highly Confidential and Public Versions of Metra's Comments)  
Parties of Record (w/ Public Version of Metra's Comments)  
Counsel for Applicants (w/Three Copies of Highly Confidential Version of Metra's Comments)

BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.

221744

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Finance Docket No. 35081

CANADIAN PACIFIC RAILWAY COMPANY, *ET AL.* – CONTROL –  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., *ET AL*

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**METRA COMMENTS IN OPPOSITION TO PROPOSED TRANSACTION AND  
REQUEST FOR CONDITIONS**

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NORTHEAST ILLINOIS REGIONAL  
COMMUTER RAILROAD CORPORATION  
AND  
THE COMMUTER RAIL DIVISION OF THE  
REGIONAL TRANSPORTATION AUTHORITY,  
BOTH d.b.a. METRA  
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Public Record

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Due Date: March 4, 2008

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

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Finance Docket No. 35081

**CANADIAN PACIFIC RAILWAY COMPANY, *ET AL.* – CONTROL –  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., *ET AL***

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**METRA COMMENTS IN OPPOSITION TO PROPOSED TRANSACTION AND  
REQUEST FOR CONDITIONS**

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The Northeast Illinois Regional Commuter Railroad Corporation and The Commuter Rail Division of the Regional Transportation Authority, both doing business as Metra, hereby oppose the application of Canadian Pacific Railway Company ("CP") for authority to control the Dakota, Minnesota & Eastern Railroad Corp. ("DM&E") and the Illinois, Chicago & Eastern Railroad Corp. ("IC&E") unless the Board conditions approval of the transaction upon measures that will protect Metra's commuter rail service.

**Background and Summary of Position**

Metra provides commuter rail service in the six counties of Northeastern Illinois. Metra service currently operates on 11 different rail lines that link suburban communities with downtown Chicago. A map depicting the 11 routes is attached as Exhibit A to these comments. In 2007, Metra provided 83 million passenger rail trips, and set numerous ridership records as demand for commuter rail service reached its highest level in Metra's 24 year history. Metra prides itself on its on-time performance, which on a system-wide basis was 95.7% on-time within a 5 minute level of tolerance during 2007, one of the highest on-time performance records

in the United States. Over the last six years, the average on-time performance for the system has been 96.5%.

The quality of Metra service over two of those rail lines, the Milwaukee District West Line ("West Line") and the Milwaukee District North Line ("North Line") (depicted MD-W and MD-N on the map attached as Exhibit A), will be threatened should this transaction be approved without conditions. Metra acquired the West and North Lines in transactions with the Trustee of the Milwaukee Road in 1989. CP's Soo Line subsidiary was granted trackage rights over each line with the right to dispatch those lines by the Trustee in 1985. The North Line extends between Fox Lake, Illinois and Chicago Union Station, and the West Line extends between Alton (or Big Timber), Illinois and Tower A-5 in Chicago, where it joins the North Line (between the Healy and Western Avenue stations) for movement to and from Chicago Union Station.

The North Line has considerable daily traffic, and currently is operating at capacity during the peak commuter periods on weekdays. On weekdays, there are 60 Metra trains, 16 Amtrak trains,<sup>1</sup> and an average of 17.3 CP trains,<sup>2</sup> and two Wisconsin & Southern Railroad ("WSOR") trains. WSOR is contractually limited to one round trip per day over Metra

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<sup>1</sup> Amtrak is proposing to add six additional trains on the North Line.

<sup>2</sup> From June 1, 2006 through May 31, 2007, CP operated 6320 trains past Rondout, which is the point along the North Line where the branch to Fox Lake leaves the main Chicago – Milwaukee or "C&M" CP route. That averages 17.3 trains for a 365 day year, but train frequencies fluctuate monthly. For instance, during July 2006 there was an average of 18.9 trains per day, as contrasted with 15.4 trains per day during April 2007. Only one local CP freight train and one WSOR train in each direction operates over the Rondout to Fox Lake branch in addition to Metra's service.

property.<sup>3</sup> The North Line has 5.2 miles of triple track, 27.0 miles of double track and 17.5 miles of single track on the Fox Lake subdivision. The single track section has one passing track, 0.83 miles in length. The North Line has a Centralized Traffic Control ("CTC") signal control system on the triple and double track segments and is Automatic Block System ("ABS") on the single track segment.

The West Line also has considerable daily traffic. On weekdays, Metra operates 79 trains, CP an average of 11.2 trains,<sup>4</sup> IC&E operates an average of 6 trains,<sup>5</sup> CN operates an average of 4.5 trains over the six-mile segment between Tower B12 in Franklin Park and Cragin and WSOR operates the same two trains per day over the two-mile segment between Tower A5 and the connection with the Belt Railway of Chicago at Cragin. Starting at Tower A5, where the West Line diverges from the North Line, the West Line has 5.2 miles of triple track, 27.6 miles of double track and 0.3 miles of single track. The entire West Line has a CTC signal control system.

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<sup>3</sup> WSOR has recently obtained rights from CP to operate unit grain trains over the C&M route between Milwaukee and Rondout, but Metra has not granted WSOR rights to operate any additional trains over its North or West Lines. Nevertheless, Metra's Jack Bauer learned last Fall from an article in a trade magazine that WSOR had, indeed, operated at least one additional grain train over the North and West Lines. Mr. Bauer complained to his counterpart at CP, Jim Bender, that this additional service was unauthorized, and Mr. Bender blamed the incident on WSOR. To Metra's knowledge no additional WSOR unit grain trains have been permitted to operate over the North and West Lines, but it has no ability to monitor that because CP dispatches these lines.

<sup>4</sup> Using the same period from June 2006 to May 2007, CP operated 4,081 trains through the segment between Tower B-12 (Franklin Park) and Tower A-5, which averages to 11.2 trains during a 365 day year. That traffic fluctuated between 9.6 trains per day in July 2006 and 13.2 trains per day during March of 2007.

<sup>5</sup> IC&E operated 2,190 trains from June 2006 to May 2007 through the Alton to Elgin section of the West Line which yields the average of six trains per day for a 365 day year. The monthly figures fluctuated between 4.9 trains in April 2007 and 7.1 trains in August and October 2006.

While Metra owns the North and West Lines, the 1985 Trackage Agreement between CP and the Milwaukee Trustee, as supplemented and amended from time to time ("Metra/CP Trackage Agreement"), grants CP the right to dispatch these lines subject to the requirement to provide priority to Metra's schedules and operations, and to insure that there be no material interference with that service. CP dispatches these lines from the Soo Line building in Minneapolis, MN.

The on-time performance average on the two CP dispatched Metra routes over the period of 2007 has been worse than Metra's system-wide average, and worse than each of the four lines Metra dispatches. The North Line has the third worst on-time performance record over that period of any of Metra's lines. The average number of "delayed" trains, defined as trains 6 or more minutes late, on the North Line are the second highest on the Metra system.

**Average On-time Percentage 2002-2007<sup>6</sup>**

Metra System-Wide	- 96.5%
Metra Electric – ML	- 97.9%
Metra Electric – BI	- 98.7%
Metra Electric – SC	- 96.4%
CP – North Line	- 94.3%
CP – West Line	- 95.7%

Metra dispatches lines under its control through its Consolidated Control Facility ("CCF") located at 1501 South Canal Street in Chicago. Constructed in the early 1990's, this facility was intended to house personnel from Metra to dispatch lines over which Metra trains operate and for tower operators from those lines. At the CCF, Metra currently dispatches the two lines of the Rock Island District, the three lines of the Electric, and the North end of Metra's Southwest Service (between 21<sup>st</sup> Street and 74<sup>th</sup> Street). The CCF also houses the operator of

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<sup>6</sup> These data are derived from the Table, attached hereto, as Exhibit B to these Comments, captioned "Annual Train Delays and On-Time Performance."

Tower B12 on the West Line which controls the interlockings at CP (control point) Cicero West, Galewood East, and Tower B12 at Franklin Park on the West Line. However, this operator, who is a Metra employee, is under the direction of the CP dispatcher in Minneapolis. That operator is in no position to exercise discretion to prevent movements of trains that by agreement are not authorized to proceed through those points or to delay freight trains that should defer to Metra's passenger trains.

CCF currently provides space for the Chicago Transportation Coordination Office ("CTCO") which is comprised of representatives of each Class I carrier operating through the Chicago terminal, along with Metra, the Belt Railway of Chicago and the Indiana Harbor Belt Railroad. The facility is equipped with communication links for each representative to stay in touch with their respective dispatching centers to monitor traffic on all corridors, as they attempt to coordinate and expedite all freight movements through the Chicago terminal. However, the dispatching for non-Metra controlled lines is performed elsewhere.

#### West Line Agreements of 2003.

When DM&E proposed in 2002 through IC&E to acquire trackage rights CP had granted to I&M Rail Link for IC&E access to Metra's West Line<sup>7</sup>, Metra had three concerns:

- (1) growth of DM&E – IC&E traffic resulting from the transaction;
- (2) construction of the Powder River Basin line and the resulting additional, longer and heavier trains over Metra's West Line placing greater wear and tear on the track structure and the ensuing threatened increased conflicts with Metra trains; and

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<sup>7</sup> IC&E sought in STB F.D. No. 34177 to acquire and operate the lines of the I&M Rail Link, LLC, and DM&E and Cedar American Rail Holdings, Inc. sought authority to control IC&E in STB F.D. No. 34178.

- (3) the financial weakness of DM&E that required additional protections through indemnifications, insurance and escrow accounts to ensure that Metra would be reimbursed for necessary capital projects.

In 2002 and 2003, CP had an arms length, and at times contentious, relationship with DM&E.<sup>8</sup> Through lengthy and difficult negotiations over several months, CP, DM&E/IC&E and Metra arrived at a satisfactory accommodation of Metra's three concerns in a trackage rights agreement between Soo Line d/b/a CP and IC&E, to which Metra is explicitly a third party beneficiary, ("ICE Chicago Trackage Rights Agreement")<sup>9</sup> and an Amendment Agreement to the Metra/CP Trackage Agreement that among other things mandated that CP, in its role as dispatcher of the West Line, enforce the provisions that were designed to protect Metra's service over that Line.<sup>10</sup> The ICE Chicago Trackage Rights Agreement and the Amendment Agreement are sometimes hereafter referred to as the "2003 Agreements."

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<sup>8</sup> Indeed, CP's Soo Line subsidiary was a party to legal proceedings pending in the United States District Courts of Minnesota captioned as *Soo Line Railroad Company v I&M Rail Link, LLC, et al.* (Court File No. 020-1930) in which Soo Line sought, *inter alia* to enforce against IC&E provision of trackage rights agreements that required Metra's prior concurrence in the substitution of IC&E for the I&M rail Link as a third party carrier on the West Line. Metra instructed CP not to permit IC&E access to the West Line until satisfactory safeguards to Metra's three concerns were addressed. When CP complied with Metra's instruction, IC&E initiated litigation against Metra in the U.S. District Court for the Northern District of Illinois in *Iowa, Chicago & Eastern Railroad Corp. v. Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois* (Court File No. 02 C 5508).

<sup>9</sup> See Chicago Trackage Rights Agreement between Soo Line Railroad d/b/a Canadian Pacific Railway and Iowa, Chicago & Eastern Railroad Corp., dated April 1, 2003 at §8.4 attached as Exhibit C to these comments. Copies of this exhibit and Exhibits D and E are labeled "Highly Confidential," and have been filed under seal and served by hand on Applicants' counsel. Counsel for Metra will provide copies of the Highly Confidential Exhibits to counsel for parties of record who have signed the "highly confidential" undertaking and request copies.

<sup>10</sup> See *e.g.* Amendment Agreement, dated April 1, 2003, at §4, attached as Exhibit D to these comments.



Because CP had no ties or allegiance to DM&E/IC&E, CP was charged with the duty to serve as a gate keeper to ensure that daily IC&E train counts did not exceed certain levels, 8 trains per day, that under circumstances permitted by the ICE Chicago Trackage Rights Agreement if the trains exceeded such thresholds that Metra receive notice of its entitlement to Excess Train Charges, that Metra's consent be obtained prior to admission of PRB Coal Trains or of additional, regularly scheduled trains above certain thresholds and that procedures for achieving consensus on required capacity improvements were followed.

At least three things will change with CP's acquisition of DM&E/IC&E that impact the remedies negotiated in 2003:

- (1) CP is no longer a neutral, third party gatekeeper upon which Metra can rely for enforcement of the provisions of the 2003 Agreements;
- (2) as CP's application concedes, DM&E/IC&E traffic can and will now be routed over Metra's North Line; and
- (3) construction of the coal line to the Powder River Basin is far more likely than it was in 2003.

The 2003 Agreements do not address the impacts on the North Line and Metra's service over it because in 2003 there was no threat that CP would admit DM&E/IC&E traffic to the North Line. Now CP has announced that such re-routing will occur, and it raises the specter that PRB Coal Trains will follow.<sup>11</sup> With CP's conversion from a neutral, third party gatekeeper for the West Line, Metra's service over the West Line and the North Line is no longer protected by effective safeguards.

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<sup>11</sup> See discussion *infra* at p. 11.

A fourth concern is that CP may not have fully identified the additional traffic that will be re-routed via the West Line as a result of the transaction. The CP Application at 13, and the Verified Statement of CP Vice President – Marketing & Sales (Merchandise), Mr. Ray Foot, at 2-7 describe almost exclusively the opportunities for extending hauls on traffic for DM&E/IC&E shippers over the lines of the CP network. Apparently not studied, was the possibility of diverting existing CP traffic originated or terminated east of Chicago that is currently interchanged at Chicago with western railroads for movement to/from markets served by DM&E/IC&E.

CP's Application describes only meager traffic gains resulting from the transaction (5,800 carloads).<sup>12</sup> It describes no significant operating consolidations or cost savings. CP states that it will invest \$300 million to upgrade the DM&E and IC&E facilities, and make them safer railroads. However, these facts beg the question: why is CP spending \$1.48 billion plus \$300 million on upgrading for a railroad system that had negative operating capital at the date of purchase and will generate virtually no synergistic benefits or cost savings? The Application would have the STB believe that the transaction is a stand alone bargain justified by the "organic" growth in DM&E/IC&E traffic.<sup>13</sup> Metra believes that the coal trains and perhaps trains carrying unmeasured traffic are coming to or leaving the Chicago terminal over the West

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<sup>12</sup> See CP Application at 13.

<sup>13</sup> See *id.* CP estimates that the revenues generated by the 64,000 additional carloads which it projects will arrive by 2010 is \$53.6 million. At CP's most recently announced operating ratio for 2007 of 75.3% (January 29, 2008 earnings release) that would yield \$13.2 million to the bottom line. Add to that the 5,800 carloads of diverted traffic, which using the same revenue per carload and operating ratio as for the organic traffic, yields \$1.2 million in net revenues, plus the \$12 million in other equity income reported for the DM&E stock in CP's 2007 financial reports. The total of \$26.4 million yields a 1.5% return on CP's \$1.78 billion investment in DM&E.

and North Lines, and that the agreements governing operations over these lines need to be amended to deal with these challenges.

Immediately upon receiving CP's Application Metra sought to negotiate amendments with CP to modify the Metra/CP Trackage Agreement and the ICE Chicago Trackage Rights Agreement to incorporate provisions to protect Metra service over the North Line that were satisfactory to DM&E and CP in 2003 for the West Line. After an initial meeting, CP refused to negotiate such amendments, thereby requiring this request for conditions to protect Metra's rail service. In the days prior to this filing, negotiations have resumed, but no resolution has been reached as of this filing.

**Conditions Necessary to Protect Metra Service.**

The existing agreements governing operations over the North and West Lines are not capable of addressing the risks to Metra service raised by CP's acquisition of DM&E.

Recognizing that the STB cannot negotiate effective arrangements between Metra and CP, Metra requests that the following conditions be imposed on the approval of CP's application to control DM&E/IC&E:

- (1) CP shall transfer to Metra the right to control and dispatch train operations over the North and West Lines out of Metra's Consolidated Control Center in Chicago;
- (2) CP shall not commence operation of any PRB coal trains over the West or North Lines until Metra has completed construction of necessary capacity improvements as determined in accordance with the provisions equivalent to those contained in the CP/Metra Trackage Rights Agreement and the ICE Chicago Trackage Rights Agreement which are necessary to preserve Metra's service capabilities over the North and West Lines;
- (3) The expense of such capacity improvements shall be borne solely by CP, to the extent they are required solely for the movement of such coal trains or other CP/DM&E/IC&E trains.
- (4) CP shall pay Metra (i) the Excess Train Charge or Coal Train Charge, as specified in §3.1 and §3.2 of the ICE Chicago Trackage Rights Agreement, adjusted

annually in accordance with the Agreement in connection with any DM&E/IC&E traffic transported via the North Line, (ii) a charge for the increased traffic in connection with any DM&E/IC&E traffic transported via the North Line calculated on the same basis as specified for Increased Traffic in §3.1 of the ICE Chicago Trackage Rights Agreement, and (iii) an annual rental charge to Metra for introduction of the DM&E/IC&E traffic to the North Line pursuant to the same provisions under which rental is paid pursuant to the Metra/CP Trackage Agreement and the 1997 Agreement, see Section V, *infra*, for operations over the West Line;

- (5) When implementing the preceding condition, any trains originated or terminated along the DM&E/IC&E lines that operate over the West Line or the North Line, regardless of the ownership of the locomotives powering such trains, shall be counted as IC&E trains for purposes of the ICE Chicago Trackage Rights Agreement, the Metra/CP Trackage Agreement and any other agreement governing the North Line.
- (6) CP and its affiliates shall acknowledge that its rights to admit third party carriers to the line have been satisfied and that it may not admit any third party carrier in the future to the West or North Lines; and
- (7) CP shall negotiate with Metra such agreements as appropriate to implement the preceding conditions, with a right of either party to petition the Board to impose further conditions reasonably necessary to achieve the objectives of these conditions.

### **Argument in Support of Proposed Conditions**

#### **I The Proposed Transaction Threatens the Quality of Essential Metra Service.**

The STB has broad authority in approving a railroad consolidation to impose conditions that are in the public interest accordance with 49 U.S.C. §11324(c). The Board's policy statement governing Class I mergers and consolidations requires that such conditions be tailored to offset adverse impacts upon essential transportation services created by the proposed transaction. *See* 49 C.F.R. §1180.1(d). At the same time, this policy requires that such conditions be "operationally feasible and produce net public benefits, but [the Board] will not impose conditions that undermine or defeat a beneficial transaction by creating unreasonable operating, financial, or other problems for the combined carrier." *Id.*

The policy statement should be applied to any rail consolidation that threatens to harm essential rail services. The Policy Statement makes it clear that, "The Board must ensure that essential freight, passenger, and commuter rail services are preserved wherever feasible." *Id.* at §1180.1 (c)(2)(ii). Metra's services over the West and North lines are essential commuter services for the Chicago metropolitan area. As Metra's Deputy Executive Director, Mr. G. Richard Tidwell, explains in his verified statement attached to these comments:

"Metra's commuter rail services over the West and North Lines are essential to the citizens, businesses and environment of the Northeast Illinois region. Without dependable, high quality Metra commuter rail services in these corridors, congestion on the already clogged arterial streets and highways would impose economic and environmental costs that would stifle economic development and drive people and businesses from our region. This cannot be permitted to happen."

See Exhibit F to these comments at ¶4.

Metra has no reliable way to monitor the consolidation and shifting of traffic originated or terminated at DM&E/IC&E stations or CP stations once CP controls those entities. The 2003 Agreements negotiated with DM&E/IC&E and CP never contemplated that DM&E/IC&E would become part of the CP corporate family, and will be ineffective unless similar protections are extended to the North Line and an independent method is put in place for monitoring the re-routing of traffic from one line to the other on a real time basis as it happens.

Only by dispatching the lines can Metra monitor the train designations, the locomotives, the number of loads and empties that travel across the West and North Lines on a current basis. Only by dispatching will Metra be aware that thresholds established by the 2003 Agreements are exceeded on a real time basis. If Coal Trains begin moving before required capacity improvements are completed, Metra will be in a position to prevent this access to the lines.

This is not a hypothetical or theoretical problem. This problem is not dependent upon CP's final decision concerning the coal line to the Powder River Basin. The re-routing of DM&E/IC&E traffic is projected in the Application. At pp. 21-22, CP projects that 27,360 carloads of new generic traffic will be routed via IC&E's line between Sabula, Iowa and Chicago – the West Line. CP claims that increased traffic will be offset by the elimination of one train in each direction over the West Line by re-routing a DM&E/IC&E train between Owatonna and Chicago to Minnesota City, MN for consolidation with a Soo Line Twin Cities - Chicago train. *See also* Exhibit 13 at 27, and Verified Statement of Vern Graham, CP Application, Vol. II at 4. The CP train between the Twin Cities and Chicago operates over Metra's North Line.

This process can and likely will be repeated when CP decides to proceed with construction of the PRB coal line.

**II. The Decision to Impose Conditions Cannot be Deferred Until a Decision by CP on the PRB Coal Line.**

The ability of CP to reroute DM&E/IC&E traffic over the North Line can occur immediately upon approval of the control transaction, regardless of whether CP constructs the PRB coal line. Certainly, the impacts of a decision to proceed with construction of the coal line are more significant, and will trigger the need for an evaluation of capital improvements necessary to accommodate those trains. However, the procedural framework for such an evaluation needs to be established now as part of the analysis and conditions that govern the transportation issues raised by CP's Application.

**III. Transfer of Dispatching Control is the Only Way that Metra Can Enforce Provisions to Protect its Service.**

Only through dispatching the West and North lines can Metra know what trains are being admitted to the lines on a real time basis. Metra cannot count upon magazine articles to disclose movements that CP fails to disclose. The existing agreements have audit provisions to permit verification of periodic data provided by CP. However, that is a post-facto remedy that will not permit a pro-active monitoring of changes in traffic patterns that will permit Metra to anticipate looming challenges to the capacity of these lines and to prevent deterioration of the quality of its commuter rail services on a daily basis.

**IV. Transfer of Dispatching Control can be Achieved Safely and Without Disruption of CP Operations**

The CCF has room to accommodate the dispatching of the lines, and Metra has the expertise in developing plans to safely transition these functions to the CCF. Once the dispatching function is transferred to Metra's dispatching staff, CP's representative to the Chicago Transportation Coordination Office will be in the same building to discuss decisions or issues that CP has with the flow of its traffic over these lines.

The transition of these functions will be vetted with the Federal Railroad Administration, and Metra will seek any necessary approvals as required by 49 C.F.R. Part 236.

**V. Fees Imposed on West Line Traffic Should be Extended to Increased Traffic on the North Line.**

DM&E/IC&E agreed to pay additional fees to Metra in the ICE Chicago Trackage Rights Agreement in the event additional trains were routed over the West Line. *See* Exhibit C, at §3.1 and §3.2. Now that this additional traffic can be shifted to the more crowded North Line, the fees should follow the traffic. To the extent CP adds trains to the North Line for traffic originated or terminated at DM&E/IC&E stations, and for all PRB coal trains routed via the North Line, CP should pay these charges.

Also, when CP admitted I&M Rail Link to the West Line in 1997, Metra and CP agreed that CP would pay an annual rental charge for the admission of this third party carrier. *See* Agreement dated April 7, 1997, attached hereto as Exhibit E ("1997 Agreement")<sup>14</sup> That rental charge is now being paid on behalf of IC&E for its operations over the West Line. Since DM&E/IC&E traffic will now be routed via the North Line, an additional annual rental charge

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<sup>14</sup> This Exhibit has been designated as Highly Confidential, and has been filed under seal.



should be paid by CP for the admission of this traffic to the North Line. The rental charge is based upon the mileage in each of the zones of Joint Lines occupied by the third party carrier's traffic.

**VI. With the Acquisition of DM&E/IC&E, CP has in Effect Admitted this Carrier to the North Line, and Should Not be Permitted to Admit Other Third Party Carriers Either to the North or West Lines**

Under the Metra/ CP Trackage Agreement originally between Soo Line and the Milwaukee Trustee, Soo Line was given the right to admit a third party to the West and North Lines, subject to certain conditions. The admission of the IC&E to the West Line triggered the need for the 2003 Agreements. Now that CP is in effect admitting the DM&E/IC&E traffic to the North Line by virtue of this control proceeding, the Board should condition its approval upon the acknowledgement by CP and Soo Line that no other third party carrier will be granted access to the North or West Lines. Metra believes that the existing agreements mandate this result, but Metra does not believe that the matter should be open to question by CP at a later date.

**Conclusion**

The Board should protect the essential services provided by Metra over the West and North Lines by imposing conditions that transfer to Metra the dispatching function on these lines so that the limitations agreed to in 2003 can be monitored and enforced on a real time basis, and that extend the remedies that were thought in 2003 to be necessary only on the West Line to the North Line in view of the plans by CP to re-route West Line traffic over the North Line. These conditions will not burden or restrict CP operations in the Chicago terminal except to the extent that necessary expansion of line capacity must be achieved prior to the introduction of additional traffic to these lines, including PRB traffic. These restrictions are implicit in the original agreements between Soo Line and the Milwaukee Trustee and subsequent amendments, but the

procedures negotiated in 2003 in the context of the admission of the IC&E provide greater certainty that increased freight traffic will not interfere with Metra's train service. These conditions are in the public interest because they are necessary to preserve Metra's essential commuter rail services.

Respectfully submitted,



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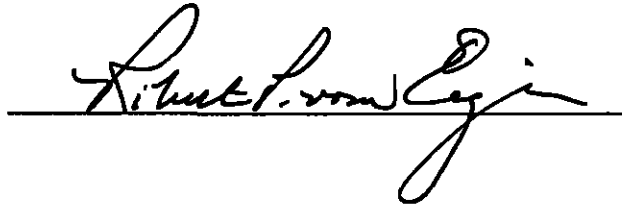
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Dated: March 4, 2008

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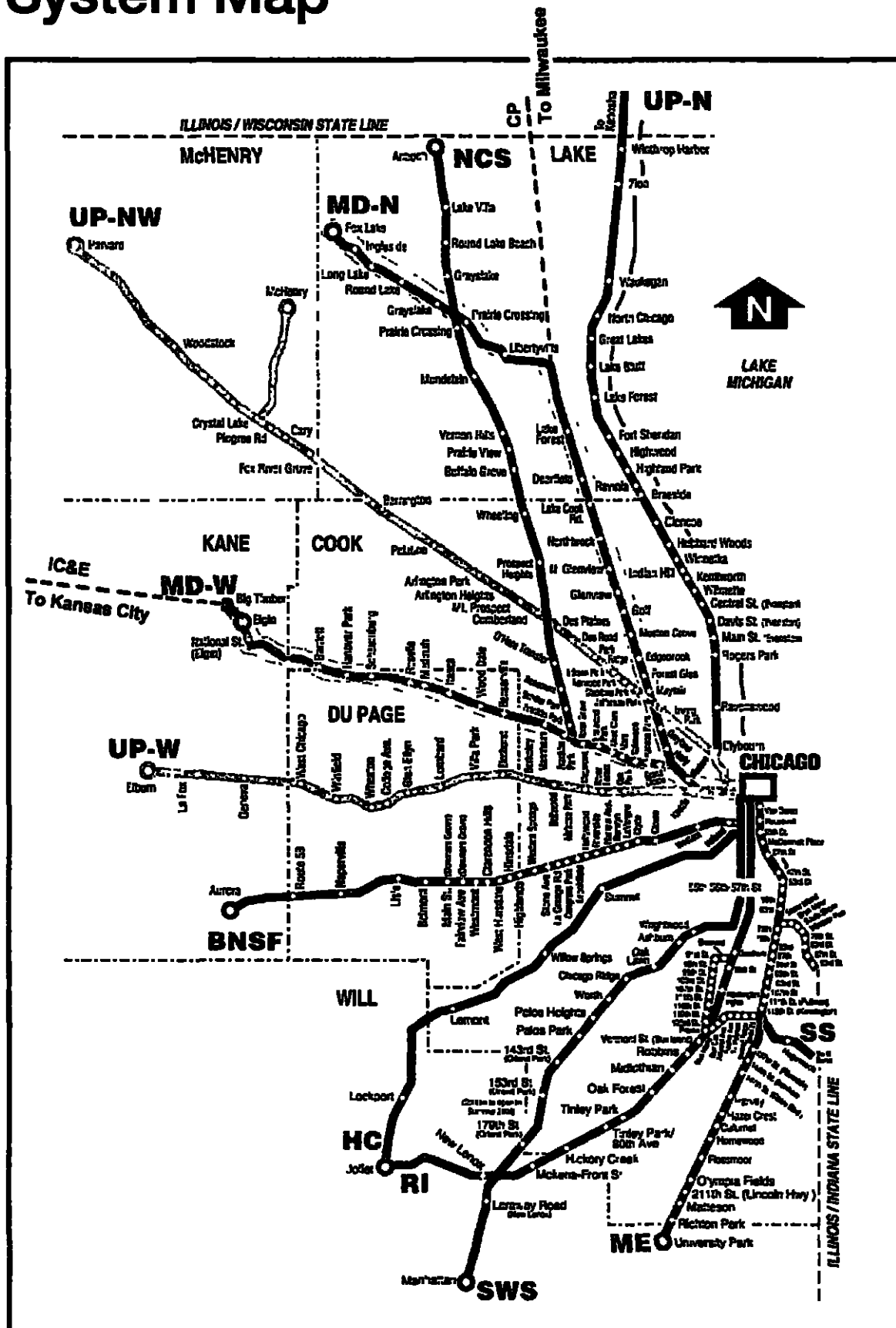
### **CERTIFICATE OF SERVICE**

I hereby certify this 4<sup>th</sup> day of March, 2008, that I have caused the Public Version of Metra Comments in Opposition to Proposed Transaction and Request for Conditions to be filed with the Board by hand and served postage pre-paid, on all parties of record other than Washington, D.C. counsel for Applicants, which were served by hand. Also enclosed is the Highly Confidential Version of Metra's Comments which are filed under seal with the Board and served by hand on Applicants' counsel.

A handwritten signature in cursive script, reading "Robert L. von Esch", is written over a horizontal line.

**EXHIBIT A**

# System Map



**EXHIBIT B**

**TABLE 13: ANNUAL TRAIN DELAYS AND ON-TIME PERFORMANCE**  
**2002 - 2007**

	DELAYS						ON-TIME PERFORMANCE					
	2002	2003	2004	2005	2006	2002 - 2006 Avg	2002	2003	2004	2005	2006	2002 - 2006 Avg
BNSF	1,258	1,133	1,126	1,191	1,312	1,204.0	1,125	95.3%	95.8%	95.8%	95.0%	95.5%
Conrail	574	344	406	340	503	455.4	766	97.6%	98.5%	98.3%	97.8%	98.3%
Metrolink	137	98	120	131	230	149.2	191	98.7%	99.2%	98.9%	97.9%	98.7%
Metrolink	204	269	174	224	203	204.8	359	98.8%	98.8%	99.0%	98.8%	98.8%
Heritage	117	90	100	105	109	104.2	136	92.4%	94.1%	93.5%	92.9%	93.2%
M-N	1,290	672	797	975	1,094	965.6	1,126	92.4%	96.1%	95.4%	93.7%	94.4%
M-W	774	532	834	884	680	740.8	728	95.5%	96.9%	95.2%	96.0%	95.7%
NCS	363	236	242	249	276	273.2	304	85.8%	90.8%	90.6%	94.5%	90.4%
UP	315	499	465	1,026	708	602.6	1,105	98.4%	97.4%	97.6%	96.3%	96.9%
SWS	145	180	178	211	507	244.2	269	96.4%	95.6%	95.7%	93.1%	95.1%
UP-N	387	381	353	463	425	401.8	886	97.8%	97.9%	98.0%	97.6%	97.8%
UP-NW	423	420	417	567	436	452.6	752	97.7%	97.7%	97.1%	97.7%	97.5%
UP-W	812	838	815	894	907	853.2	1,017	95.2%	95.0%	95.2%	94.7%	95.0%
SYSTEM	6,809	5,627	6,027	7,260	7,400	6,624.6	8,773	96.5%	97.1%	96.9%	96.3%	96.6%
SuShore	1,291	1,252	1,503	1,765	2,050	1,572.2	2,954	89.9%	90.2%	88.3%	83.9%	87.7%
Sys w/ SS	8,100	6,879	7,530	9,025	9,450	8,196.8	11,727	96.1%	96.7%	96.4%	95.6%	96.1%

Data for December 2007 is final (01/15/08) version from TOPS

1/16/2008

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DISPATCHED BY METRA

DISPATCHED BY CP

**EXHIBIT C**

**Chicago Trackage Rights Agreement**  
**(Highly Confidential and Filed Under Seal)**



**EXHIBIT D**

**Amendment Agreement**  
**(Highly Confidential and Filed Under Seal)**

**EXHIBIT E**

**(Agreement Between CP and Metra  
Highly Confidential Filed Under Seal)**

**EXHIBIT F**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
WASHINGTON, D.C.**

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Finance Docket No. 35081

**CANADIAN PACIFIC RAILWAY COMPANY. *ET AL.* – CONTROL –  
DAKOTA, MINNESOTA & EASTERN RAILROAD CORP., *ET AL***

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**VERIFIED STATEMENT OF G. RICHARD TIDWELL**

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1. My name is G. Richard Tidwell, and I am Deputy Executive Director of Metra. My business address is 547 West Jackson Boulevard, Chicago, IL 60661. I began my work for the Regional Transportation Authority in 1977, and joined Metra at its creation, working in various positions in Metra's operations department. As Metra's Deputy Executive Director, I am qualified and authorized to file this verified statement.

2. Metra is proud of the high quality and dependable commuter rail services it provides in Northeastern Illinois for residents of and visitors to the Chicagoland region. We recognize that we must remain vigilant as changes occur within the Chicago rail network to insure that those services are not impaired. We do not attempt to stop or avoid change because it is inevitable, and we are prepared to adapt to the challenges created by change.

3. However, in the case of the Canadian Pacific Railway's proposal to acquire the Dakota Minnesota & Eastern Railroad and its Illinois, Chicago & Eastern Railroad subsidiary, we need modifications to the remedies that are embodied in agreements executed in 2003 when IC&E, through the CP, gained access to Metra's West Line. Those remedies did not contemplate that CP would become allied with DM&E/IC&E. The consolidation of these companies under CP's

common control will permit CP to shift traffic between the West and North Lines, and the North Line is currently approaching full capacity. We attempted to negotiate solutions to these issues, but CP terminated those discussions. Recently, discussions have resumed, but have not resulted in an agreement.

4. Metra's commuter rail services over the West and North Lines are essential to the citizens, businesses and environment of the Northeast Illinois region. Without dependable, high quality Metra commuter rail services in these corridors, congestion on the already clogged arterial streets and highways will impose economic and environmental costs that will stifle economic development and drive people and businesses from our region. This cannot be permitted to happen.

5. Metra is proposing that the Board impose conditions upon its approval of the proposed transaction that will result in the preservation of these essential services, and at the same time permit CP and its new affiliates to achieve their commercial objectives. Metra is currently in an unusual, and perhaps unique, position of owning the West and North Lines, but not controlling the dispatching of those lines. This transaction creates risks to Metra service that can only be addressed through conditions that shift the dispatching to Metra and extend the remedies of the 2003 agreements which protect the West Line to the North Line as well. Once imposed we believe the parties will be successful in negotiating a revised remedial structure that will protect the interests of both sides, and remove the threat to Metra service.

6. I have read Metra Comments in Opposition to Proposed Transaction and Request for Conditions, dated March 4, 2008, and the factual statements and opinions contained therein are true and correct to the best of my knowledge and belief.

7. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on March 4, 2008

  
G. Richard Tidwell